STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 16,305
	)	
Appeal of	)	
	)	

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare not allowing him a community spouse allocation from his income under the Home and Community Based Waiver (HCBW) program under Medicaid. The issue is whether the fact that the petitioner's wife also receives HCBW services renders the petitioner ineligible for a community spouse allocation from his income in determining his patient share.

DISCUSSION

The following facts are not in dispute and are taken from the parties written arguments submitted in lieu of an oral hearing. The petitioner and his wife live together in their home and are both recipients of HCBW services through the Medicaid Waiver Program. Individuals are eligible for HCBW services in their homes and community when it has been found that without such services they would require the level of care provided in a nursing home.

Eligibility for HCBW services is not defined in the state Medicaid regulations. It is a federal program, and eligibility is determined according to federal statutes and regulations. See 42 U.S.C. § 1396a(a)(10)(ii)(VI). Neither the petitioner's nor his wife's eligibility for HCBW is at issue herein. The issue is how much of the petitioner's income is deemed available to him as his "patient share" which he must contribute toward his care.

Patient share computations are made for all Medicaid recipients who reside in "long-term care" facilities (most often, nursing homes). See Medicaid Manual (MM) § M415. Under the regulations certain income and resources of a married "institutionalized spouse" can be set aside from this computation for the benefit of his/her "community spouse", which is defined in the state regulations as a spouse who is "living in the community" (MM § 413.21) and by the federal statute a "the spouse of an institutionalized spouse" (42 U.S.C. § 1396r-5[h][2]).

In determining eligibility for a spousal allocation, the federal statutes provide that individuals who receive HCBW services are treated the same as those who reside in a nursing home. 42 U.S.C. § 1396r-5(h)(1), see infra. That is, a recipient of HCBW services who lives in the community is

entitled to a community spouse allocation the same way as that of a nursing home resident. The problem in this case (at least from the Department's point of view) is that the petitioner's spouse, although she lives in the community (with the petitioner), is also a recipient of HCBW services. The Department has determined that this makes the petitioner ineligible for a community spouse deduction.

The Department's rationale appears to be that because HCBW recipients are treated the same as nursing home residents the petitioner's wife ceases to be a "community spouse" by virtue of her eligibility for HCBW services. Although perhaps not illogical, the Department's position is plainly contrary to the federal statutes.

The Department concedes that the federal and state definitions of a "community spouse" (see supra) make no mention of HCBW services. However, 42 U.S.C. § 1396r-5(h)(1) defines an "institutionalized spouse" as:

> . . . an individual who—
>
> (A) is in a medical institution or nursing facility or who...is described in 42 U.S.C. § 1396a(a)(10)(A)(ii)(VI) (receives HCBW services), and (B) is married to a spouse who is not in a medical institution or nursing facility. . . .

The petitioner correctly points out that part A of the above definition specifically includes individuals who receive

HCBW services but that part B makes no mention of them. Under part B, the community spouse need only not be residing in a medical institution or nursing home. This is fully consistent with the sole requirement of the Vermont definition of "community spouse" in §M413.21, i.e., that the spouse be "living in the community" (see infra). There is no requirement in either the federal statute or the state regulation that the community spouse not be receiving HCBW services. Likewise, there is no mention of HCBW services in the federal definition of "community spouse" (42 U.S.C. § 1396r-5[h][2], see infra). As noted above, the only requirement in the federal definition of community spouse is that the individual be married to an "institutionalized spouse". Inasmuch as the petitioner in this case meets the federal definition of an "institutionalized spouse", his wife meets the only federal requirement of a "community spouse".

The basic standard of statutory interpretation is that where their language is plain on its face, they must be applied according to their express terms. See e.g., State v. Fisher, 167 Vt. 36,40 (1997). To obtain the result urged by the Department, part B of § 1396r-5(h)(1), supra, would have to explicitly exempt spouses who receive HCBW services. Clearly, it does not do so. The Department points to no inconsistent law

or policy if the petitioner were to receive a spousal allocation for his wife (or she for him). Nor is there any claim or indication that the petitioner's wife is in any less need of a spousal allocation simply because she receives HCBW services herself. To the contrary, if anything, such individuals appear even more financially needy than those who reside in nursing homes or who can care for themselves in the community without HCBW services.

As noted above, the petitioner and his wife fully meet all of the pertinent federal and state definitions of institutionalized and community spouses. Absent any showing by the Department that this result is contrary to other federal law or policy, or that it is absurd or irrational on its face, the federal statutes in question must be given effect according to their plain language. Inasmuch as the petitioner receives HCBW services and his wife is "not in a medical institution or nursing facility" the petitioner is entitled by law to a community spouse allocation in her behalf.

ORDER

The Department's decision is reversed. In determining the petitioner's eligibility for Medicaid his patient share shall include a community spouse allocation for his wife.

# # #